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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

AO, AAO, 20 Mass, 3/F

455 I Street N.W

Washington, D.C. 20536

SEP 04 2003

File: [REDACTED] Office: **TEXAS SERVICE CENTER**

Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner.
Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office *for*

DISCUSSION: The immigrant visa petition was denied by the Director of the Texas Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4) in order to employ him as an associate pastor.

The director determined that the petitioner failed to establish that the offered position constituted a qualifying religious occupation for the purpose of special immigrant classification. The director also determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious occupation for the two-year period immediately preceding the filing date of the petition. Finally, the director further determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional

work, or other work continuously for at least the 2-year period described in clause (i).

Pursuant to 8 C.F.R. § 204.5(m) (1):

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The petitioner in this matter is a Baptist church established in 1968. The petitioning church owns and operates [REDACTED] a Christian school offering kindergarten, elementary, and high school education. The beneficiary is a native and citizen of Haiti who last entered the United States as a B-2 visitor for pleasure on July 3, 2002, with stay authorized to January 1, 2003. The beneficiary was subsequently granted change of nonimmigrant status from B-2 visitor to R-1 religious worker with stay authorized to April 7, 2006.

The first issue to be addressed in this proceeding is whether the offered job qualifies as a religious occupation.

The director determined that the petitioner had not established that the offered position constituted a qualifying religious occupation.

On appeal, counsel asserts that the duties of the offered position relate to a traditional religious function.

The term "religious occupation" is defined at 8 C.F.R. § 204.5(m) (2) as follows:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The statute is silent on what constitutes a "religious occupation," and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

On appeal, the petitioner submits a "Schedule of Work for [REDACTED]" [REDACTED] The petitioner has not, however, submitted any evidence to demonstrate that the position is traditionally a permanent, full-time salaried occupation within its church. Nor has the petitioner provided verification from an authorized official of the denomination that permanent salaried employment in the occupation is a traditional function within the denomination. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Therefore, it is concluded the petitioner has not shown that the offered position qualifies as a religious occupation. The decision of the director is affirmed, and the petition is denied.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary was engaged continuously in a qualifying religious occupation during the two-year period immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on October 7, 2002. Therefore, the petitioner must establish that the beneficiary was engaged continuously in the capacity of an associate pastor from October 7, 2000 to October 7, 2002.

According to the documents contained in the record, the beneficiary founded [REDACTED] in Haiti on November 4, 1979. The record contains a letter from Judy Matheny, Executive Secretary of the Baptist Evangelistic Missionary Association of Columbus, Ohio, stating that the beneficiary has served that organization as a field missionary in Haiti since 1979. On appeal, counsel submits a second letter from Ms. Matheny in which she states that the beneficiary has served as pastor of the [REDACTED] in Haiti for over 25 years. Ms. Matheny further states that most churches in Haiti pay their ministers in cash. The record also contains a document signed by the Management Committee of [REDACTED] stating that the beneficiary was the founder of the church and had served the church as titular pastor since its founding. The committee further stated that part of the beneficiary's monthly salary was paid by check, and the rest in cash. On appeal, counsel submits photocopies of three canceled checks dated March 1, 2002, July 4, 2002, and October 3, 2002. These checks, which are payable to the beneficiary, were issued by a group of four individuals (including the beneficiary himself) designated to manage the church's bank account. No evidence has been submitted to corroborate the assertion that the beneficiary was a full-time salaried pastor in Haiti from October 7, 2000 to March 1, 2002.

It is noted that one of the checks is dated October 3, 2002, three months after the beneficiary had entered the United States as a nonimmigrant visitor. Neither counsel nor the petitioner has provided any explanation as to why the beneficiary was being paid by the church in Haiti three months after he entered the United States. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence,

and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Additionally, the record contains no evidence to show that the beneficiary was serving the petitioning church as an associate pastor during the period from July 3 to October 7, 2002, the filing date of the petition. In fact, counsel stated in a letter dated May 13, 2003:

The beneficiary did **not** commence employment in April, 2003 **until the former INS granted him an "R-1" religious worker visa on April 8, 2003.**

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary had the requisite two years of experience in the occupation as of the filing date of the petition. In view of the foregoing, however, it is concluded the petitioner has not submitted sufficient evidence to establish that the beneficiary was continuously engaged in a qualifying religious occupation during the entire two-year period immediately preceding the filing date of the petition. Therefore, the petition must also be denied for this reason.

The final issue to be addressed in this proceeding is whether the petitioner has shown that it has had the ability to pay the offered wage.

Pursuant to 8 C.F.R. § 204.5(g)(2):

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

On appeal, counsel explains that the bank statements submitted by the petitioner reflect the petitioner's cash flow balance after it had paid all expenses, including salaries.

In this case, the petitioner has not submitted annual reports, federal tax returns, or audited financial statements to demonstrate its ability to pay the beneficiary the offered wage. Although counsel asserts that the petitioner's bank statements reflect the petitioner's balance after paying salaries and all other expenses, the record contains no evidence to corroborate

this claim. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. Accordingly, it cannot be concluded the petitioner has provided sufficient evidence to establish that it has had the ability to pay the beneficiary the offered wage. The petition is also denied for this reason as well.

Although not stated as a basis for denial of the petition, it is noted that the director questioned the beneficiary's credentials as a Baptist minister in her decision. Specifically, the director stated that the petitioner had not provided a copy of the beneficiary's transcripts from Tennessee Temple College or evidence from Cleveland Baptist Church setting forth the requirements the beneficiary satisfied in order to be ordained as a Baptist minister. On appeal, counsel submits the beneficiary's transcripts and a letter from the pastor of Cleveland Baptist Church explaining the requirements for ordination and how the beneficiary met such requirements. It appears that the beneficiary qualifies to serve as a Baptist minister. Nevertheless, as the appeal will be dismissed for the reasons discussed above, this issue will not be addressed further.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.